

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
)
 5 PETITIONER,)
)
 6)
 7 VS) CASE NO. 5:10-HC-2151-BO
)
 8)
 9 WALTER WOODEN,)
)
 10 RESPONDENT.)

11
 12
 13 STATUS CONFERENCE

14 MAY 17, 2011

15 HONORABLE TERRENCE W. BOYLE, PRESIDING
 16
 17

18 APPEARANCES:

19 MR. MICHAEL JAMES
 20 ASSISTANT UNITED STATES ATTORNEY
 310 NEW BERN AVENUE
 21 RALEIGH, NC 27601
 (FOR THE GOVERNMENT)

22 MR. NORMAN ACKER, III
 23 ASSISTANT UNITED STATES ATTORNEY
 310 NEW BERN AVENUE
 24 RALEIGH, NC 27601
 (FOR THE GOVERNMENT)
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1 APPEARANCES: (CONT.)

2 MS. DEBRA GRAVES
3 ASSISTANT FEDERAL PUBLIC DEFENDER
4 150 FAYETTEVILLE STREET
5 SUITE 450
6 RALEIGH, NC 27601
7 (FOR THE RESPONDENT)
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25 SHARON K. KROEGER, COURT REPORTER
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: A LOT OF WHAT WE SAID IN THE LAST
2 CASE APPLIES TO THIS CASE. WHERE ARE WE ON THE TRIAL
3 SCHEDULE WITH HIM?

4 MS. GRAVES: YOUR HONOR, UNFORTUNATELY WE ARE
5 NOT AS FAR ALONG AS IN THE PREVIOUS CASE BECAUSE OF OUR
6 LACK OF FUNDING IN THE FEDEDERAL DEFENDER'S OFFICE. I
7 FILED A MOTION, I THINK YESTERDAY, REGARDING THE FACT
8 THAT WE DON'T HAVE THE FUNDS TO HIRE AN EXPERT.

9 THE PROCESS IS IN PLACE. WE HAVE MADE THE
10 REQUEST TO WASHINGTON, BUT THE NEXT MEETING OF THE
11 COMMITTEE ON THE JUDICIAL CONFERENCE COMMITTEE ON
12 DEFENDANTS' SERVICES NEXT MEETS JUNE 13 TO 15. WE ARE
13 HOPING THAT OUR REQUEST WILL BE ON THE AGENDA AT THAT
14 TIME, AND IF IT IS, IT WOULD STILL TAKE ROUGHLY THREE
15 WEEKS AFTER THAT FOR US TO GET FUNDING.

16 SO WE ARE KIND OF AT A STANDSTILL IN TERMS OF
17 HIRING SOMEONE TO EVALUATE MR. WOODEN ON THE RESPONDENT'S
18 BEHALF.

19 THE COURT: HOW IS THIS DIFFERENT FROM A
20 REGULAR CRIMINAL CASE WHERE YOU NEEDED TO PRODUCE
21 EVIDENCE?

22 MS. GRAVES: IT'S DIFFERENT IN THAT WE
23 BUDGETED FOR THIS FISCAL YEAR TAKING INTO ACCOUNT REGULAR
24 CRIMINAL CASES, BUT NOT TAKING INTO ACCOUNT HIRING
25 EXPERTS FOR THESE 4248 CASES. I THINK THE THINKING

1 WAS -- AND YOU KNOW, IT'S KIND OF HARD TO GO BACK, BUT
2 I THINK THE THINKING BACK IN THE END OF LAST YEAR WAS
3 THAT MOST EXPERTS WOULD BE COURT EXPERTS. I THINK THAT
4 THE THINKING WITHIN OUR OFFICE WAS THAT IT WOULD FOLLOW
5 THE 4246 MODEL AND THAT WE WERE NOT GOING TO BE HIRING
6 EXPERTS.

7 ALSO, I GUESS AT THAT TIME, WE WEREN'T SURE
8 HOW MANY OF THESE CASES WE WERE ACTUALLY GOING TO BE
9 REPRESENTING TOWARDS THE HEARING. SO THERE WAS NO PLAN
10 IN OUR BUDGET TO PAY FOR EXPERTS.

11 NOW, I AM SURE YOU KNOW ENOUGH ABOUT THE WAY
12 OUR OFFICE WORKS TO KNOW THAT MONEY CAN BE MOVED AROUND
13 FROM TIME TO TIME AND TO A GREAT EXTENT WE HAVE DONE
14 THAT. WE HAVE PAID OVER \$100,000 FOR EXPERTS IN 4248
15 CASES. AND THE BOTTOM LINE IS THAT WE ARE SIMPLY TAPPED
16 OUT. WE DON'T HAVE ANYWHERE ELSE TO GO TO GET MONEY
17 WITHIN THE EXISTING BUDGET.

18 THE COURT: LET'S SUPPOSE IT NEVER GETS
19 FUNDED. LET'S ASSUME THAT THE GOVERNMENT -- THAT
20 CONGRESS NEVER FUNDS IT, AND THAT THE A.O. NEVER PUTS ANY
21 MONEY IN. SURELY THE CASES JUST DON'T GO INTO SUSPENDED
22 ANIMATION FOR A LIFE SENTENCE BECAUSE YOU COULDN'T GET A
23 WITNESS.

24 MS. GRAVES: I THINK THERE ARE POSSIBILITIES.
25 I THINK THAT, OF COURSE, OUR CLIENTS WOULD AND WE WOULD

1 ARGUE THAT THEY WERE BEING DEPRIVED OF THEIR LIBERTY IN
2 VIOLATION OF THE CONSTITUTION.

3 THE COURT: AND GET A HABEAS PETITION?

4 MS. GRAVES: YES.

5 THE COURT: DO YOU THINK THAT WOULD WORK?

6 MS. GRAVES: I DON'T KNOW. BUT THE
7 ALTERNATIVE ALSO IS FOR US TO WITHDRAW FROM THE CASE AND
8 TO HAVE PANEL ATTORNEYS REPRESENT THEM BECAUSE THEIR
9 PROCESS FOR OBTAINING EXPERTS IS DIFFERENT FROM OURS. WE
10 CAN'T SECURE THE SERVICES OF AN EXPERT WITHOUT HAVING THE
11 MONEY IN OUR BUDGET, BUT THEY CAN.

12 THE COURT: CANNOT.

13 MS. GRAVES: CANNOT. BUT THEY CAN. THEY CAN
14 GET -- THEY CAN HIRE AN EXPERT BEFORE THEY ACTUALLY HAVE
15 THE MONEY.

16 THE COURT: OKAY. WELL, WHY DON'T YOU PARTNER
17 WITH A PANEL ATTORNEY AND GET THE EXPERT AND GET READY
18 FOR TRIAL. APPOINT CO-COUNSEL IN ORDER TO GET AN EXPERT.

19 MS. GRAVES: THAT IS A CREATIVE WAY OF LOOKING
20 AT IT.

21 THE COURT: THERE IS NO PROHIBITION AGAINST
22 IT. IT'S A CIVIL CASE. THAT IS WHAT EVERYBODY KEEPS
23 SAYING. YOU CAN HAVE MORE THAN ONE LAWYER.

24 MS. GRAVES: THAT IS TRUE. I WILL CERTAINLY
25 GIVE THAT SOME THOUGHT.

1 THE COURT: OKAY.

2 MS. GRAVES: YES, SIR.

3 THE COURT: AND SO YOU ARE AT A STALEMATE NOW
4 UNTIL YOU CAN GET YOUR EXPERT.

5 MS. GRAVES: YES, SIR.

6 THE COURT: WHY DON'T YOU -- I WILL DENY THE
7 MOTION TO CONTINUE, AND WHY DON'T YOU REPORT BACK IN 15
8 DAYS AND SEE WHAT THE STATUS IS THEN AND GIVE ME A
9 WRITTEN REPORT ON THE TIMING AND WHETHER YOU ARE GOING TO
10 BE ABLE TO ACHIEVE YOUR TRIAL PREPARATION.

11 MS. GRAVES: YES, SIR.

12 THE COURT: OKAY. IS THAT SORT OF WHERE WE
13 ARE IN THIS CASE? I KNOW I HAVE GOT THE MOTION TO
14 DISMISS AND I AM IN THE PROCESS OF TRYING TO ADDRESS --

15 MR. JAMES: THAT'S CORRECT, JUDGE.

16 THE COURT: -- THAT AND FINALIZE.

17 MR. JAMES: WE HAVEN'T RECEIVED ANY
18 DISCLOSURES FROM THE RESPONDENT. THAT DISCLOSURE WOULD
19 ONLY BE THEIR EXPERT'S REPORT, AND SO THAT IS WHERE WE
20 ARE WITH THIS RIGHT NOW. THAT IS OUR STATUS.

21 THE COURT: IT WOULD BE PREMATURE TO SET THIS
22 CASE FOR TRIAL; DO YOU THINK?

23 MR. JAMES: I WOULD SAY, YOUR HONOR, AT LEAST
24 UNTIL THE 15 DAY PERIOD IN WHICH COUNSEL IS SUPPOSED TO
25 REPORT TO THE COURT ON WHETHER OR NOT SHE CAN TAKE

1 ADVANTAGE OF THE COURT'S ADVICE ABOUT THE CO-COUNSEL, ET
2 CETERA.

3 THE COURT: ALL RIGHT. BASED ON WHATEVER THE
4 GOVERNMENT -- I MEAN THE PUBLIC DEFENDER'S FILING IS,
5 MAYBE YOU CAN USE THAT AS AN OPPORTUNITY TO REQUEST A
6 TRIAL SETTING AND REPORT ON THE DISCOVERY DISCLOSURES AND
7 EXPERT DISCLOSURES.

8 SO WE WON'T SET A FORMAL DATE, BUT WE WILL SET
9 A PROCESS TO GET A DATE. IS THAT OKAY?

10 MR. JAMES: YES, YOUR HONOR.

11 MS. GRAVES: YES, SIR.

12 THE COURT: ALL RIGHT. ANYTHING ELSE IN THIS
13 CASE?

14 MS. GRAVES: THERE IS ONE MORE THING. I DID
15 FILE A MOTION FOR BRADY.

16 THE COURT: OKAY.

17 MS. GRAVES: AND THERE WERE SOME SPECIFIC
18 THINGS THAT WE WERE LOOKING FOR. THERE WAS A VIDEO TAPE
19 THAT WAS RUMORED TO HAVE BEEN MADE OF OUR CLIENT MAKING
20 SOME STATEMENTS BACK IN 2005 TO LAW ENFORCEMENT THAT WE
21 ARE TRYING TO GET AHOLD OF, AND WE ARE ALSO TRYING TO GET
22 AHOLD OF NOTES FROM THE DOCTOR WHO WAS TREATING HIM
23 DURING THAT TIME PERIOD.

24 SO -- AND I HAVE PREVIOUSLY ASKED MR. JAMES
25 ABOUT THOSE THINGS.

1 MR. ACKER: YOUR HONOR, AS WE SAID THE LAST
2 TIME WE WERE BEFORE YOU, WE DON'T BELIEVE WE HAVE ANY
3 OBLIGATIONS UNDER BRADY, BUT WE UNDERSTAND HOW YOUR HONOR
4 IS GOING TO RULE ON THAT, AND WE WILL COMPLY IF YOUR
5 HONOR ORDERS IT.

6 I WILL NOTE THAT WE DO NOT BELIEVE WE HAVE
7 POSSESSION OF ANY BRADY MATERIAL.

8 THE COURT: WELL, JUST LIKE IN A CRIMINAL
9 CASE, THAT IS A COMPLETE ANSWER.

10 MR. ACKER: RIGHT.

11 THE COURT: IF YOU ARE IN A CRIMINAL
12 INDICTMENT AND THE DEFENDANT LAWYER SAYS, GIVE ME ALL
13 YOUR BRADY, AND YOU SAY, YOU HAVE ALL THE BRADY THERE IS,
14 AND/OR THERE IS NO BRADY.

15 MR. ACKER: RIGHT.

16 THE COURT: THEN THAT IS A COMPLIANCE. THE
17 ONLY THING THAT CAN OVERCOME THAT IS SOME UNFORESEEN
18 DISCOVERY LATER IN TIME THAT YOU HONESTLY DIDN'T KNOW
19 ABOUT.

20 MR. ACKER: RIGHT. TO THE EXTENT THAT THERE
21 ARE MATERIALS THAT THEY ARE AWARE OF THAT THEY WOULD LIKE
22 OUR ASSISTANCE IN TRYING TO OBTAIN, I DON'T THINK WE HAVE
23 ANY OBJECTION TO DOING THAT, WHETHER IT'S INCULPATORY OR
24 EXCULPATORY. IF WE ARE GOING TO ASSIST IN GETTING IT, WE
25 WOULD LIKE TO GET IT AND WE'LL SHARE IT WITH BOTH SIDES.

1 SO WE CERTAINLY WILL DO THAT. I DON'T KNOW THAT WE CAN
2 PROMISE BECAUSE WE DON'T ALWAYS HAVE ACCESS TO CERTAIN
3 THINGS.

4 THE COURT: YES. YOU ARE NOT OBLIGATED,
5 EXCEPT FOR THE THINGS YOU HAVE.

6 I THINK IN A CRIMINAL CASE YOU HAVE TO GIVE UP
7 WHAT YOU HAVE, BUT YOU DON'T HAVE TO GO ON A HUNTING TRIP
8 TO FIND STUFF YOU DON'T HAVE.

9 MR. ACKER: THANK YOU, YOUR HONOR. THAT WAS
10 WHAT WE WANTED TO CLARIFY.

11 THE COURT: YOU DON'T HAVE TO SCOUR THE WORLD
12 TO FIND SOMETHING THAT IS BRADY, BUT IF YOU HAVE GOT IT,
13 YOU HAVE TO GIVE IT UP.

14 MR. ACKER: THAT'S CORRECT, YOUR HONOR. WE
15 JUST WANTED TO MAKE SURE THAT THAT WAS --

16 THE COURT: I THINK THAT IS THE INTENT OF THE
17 RULE. AND I OWE EVERYBODY AN ORDER WHICH I AM TRYING TO
18 FASHION THAT WILL BE A ONE SIZE FITS ALL ON THIS BRADY
19 THING SAYING THAT AS FAR AS I AM CONCERNED, IT'S
20 APPLICATION OF FUNDAMENTAL LAW AND SO YOU HAVE TO DO IT
21 RATHER THAN RESPOND IN EACH CASE.

22 MR. ACKER: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU VERY MUCH. WE'LL BE IN
24 RECESS.

25 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

CERTIFICATE

THIS IS TO CERTIFY THAT THE FOREGOING
TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
THE SHORTHAND NOTES, CONSISTING OF THE WHOLE THEREOF, OF
THE PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

DATED THIS 29TH DAY OF AUGUST, 2011.

/S/ SHARON K. KROEGER
COURT REPORTER